

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #98-23**

**WARNING**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

**SUBJECT**

Application of sales and use tax to [MODEL HOMES].

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[THE TAXPAYER] is engaged in the business of selling and installing what it describes as [MODEL HOMES]. These homes are a complete, self-contained unit with all of the necessary plumbing, heating, air conditioning, and electrical systems included. They are built on a permanent chassis with wheels. They are not designed to be moved on a regular basis, but can be moved in the same manner as a mobile home. The home is [40 FEET OR MORE] long. It is [OVER 8 FEET] wide with areas that slide out to make portions of the home [NUMBER OF FEET] wide when it is set up for use. When fully set up, the home has [OVER 320 SQUARE FEET] of living area.

The [MODEL HOMES] sold by the taxpayer are generally installed on parcels of land owned by the customer in an area formerly used as a camp ground. [NUMBER] tornado straps anchor each end of the home to protect against high winds. These straps are buried 2 feet into the ground, concrete, or asphalt. Although generally used during the summer months or for a vacation, the homes are not moved during periods of non-use. Some families live in these homes throughout the year.

The manufacturer's instructions for installing these homes direct that blocks are to be placed in [NUMBER] different locations under the home. The instructions warn that using the slideout rooms without these blocks may cause structural damage. To protect the home from water damage, roof flashing must be installed and the edges of the slideout rooms must be sealed with silicone. The instructions also warn that failure to install the homes as directed may nullify the manufacturer's warranty.

## **QUESTION**

How should sales and use tax be applied to the sale of [MODEL HOMES] described in the facts?

## **RULING**

Under the facts provided, state and local sales tax must be collected and remitted on the gross receipts or gross proceeds from the retail sale of [MODEL HOMES], including any accessories, parts, furniture, appliances, delivery fees, installation fees, and other additional or incidental items or services that are a part of the sale of the [MODEL HOMES], whether or not separately billed. The proper rates to be applied to these sales are as follows:

- (a) State tax at the rate of three-percent (3%), however, if the state tax rate is changed, the rate to be applied to these sales will be one-half (1/2) of the new state tax rate; and
- (b) Local tax at the rate imposed by the county and/or municipality in which the taxpayer is located. Local tax should be applied only to the first \$1,600.00 of the sales price. Qualified parts and

accessories, as described below, are treated as part of the sale of a manufactured home unit for purposes of applying the \$1,600.00 single article cap.

## **ANALYSIS**

Generally, Tennessee law imposes tax on the full sales price of tangible personal property sold at retail in the state. T.C.A. §67-6-202. If tangible personal property is sold to a contractor who installs it as a part of real property, then the contractor must either pay sales tax to his vendor or pay use tax directly to the Department on the price he paid for the tangible personal property. T.C.A. §67-6-209(b); TENN. COMP. R. & REGS. 1320-5-1-.27.

However, specific statutory provisions apply to the sale and installation of manufactured homes:

(a) Notwithstanding any other provisions of this chapter to the contrary, state tax equal to one half (1/2) the rate of tax provided for in §67-6-202 is levied on the gross receipts or gross proceeds from the retail sale of a manufactured home, including any accessories, parts, furniture, appliances, delivery fees, installation fees, and other additional or incidental items or services that are part of the sale of the manufactured home, whether or not separately billed.

(b) As used in this section, "manufactured home" means a structure as defined in §68-126-202.

(c) The tax levied by this section shall apply whether or not the manufactured home is installed as an improvement to the realty.

T.C.A. §67-6-216.<sup>1</sup> When tax is applied to the sale of a manufactured home as set out in T.C.A. §67-6-216, installation of the home is specifically exempt from contractor's use tax. T.C.A. §67-6-209(h).<sup>2</sup>

Thus, the application of sales and use tax turns on whether the [MODEL HOMES] qualify as manufactured homes. "Manufactured home" is defined as:

. . . a structure, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width, or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a

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<sup>1</sup> The legislature amended T.C.A. §67-6-216, effective May 8, 1997. See 1997 Tenn. Pub. Acts 194, §5. The amended version, quoted above, applies only to manufactured homes sold on or after that date.

<sup>2</sup> T.C.A. §67-6-209(h) was also added by 1997 Tenn. Pub. Acts 194, §5, effective May 8, 1997.

permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that "manufactured home" includes any structure which meets all the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary and complies with the standards established under this title. . .

T.C.A. §68-126-202(4).

Under the facts provided, [MODEL HOMES] meet this definition. The size requirement is met. They are [40 FEET OR MORE] long and [OVER 8 FEET] wide when being moved. Also, when fully set up, the home has [OVER 320 SQUARE FEET] of living area. They are built on a permanent chassis and include all of the necessary plumbing, heating, air conditioning, and electrical systems. Finally, to qualify, the [MODEL HOME] must be designed for use as a dwelling. "Dwelling" is not defined in the sales and use tax provisions of the Tennessee Code, nor in Title 68. The term "dwelling unit" is defined elsewhere in the Code as "a building or structure used as a place of residence" and as "a structure or the part of a structure that is used as a home, residence, or sleeping place...." T.C.A. §§13-20-102 and 66-28-104. The term "dwelling" is also defined in common usage as "a place to live in; abode." THE AMERICAN HERITAGE DICTIONARY, COLLEGE EDITION 431 (2nd. ed. 1985). Under the facts provided, these units appear to be designed as a place to live. Some live in these units for the summer and during holidays. Others live in them throughout the year. There is no requirement that this be the only home of the owner or even the primary residence. These homes appear to be intended for use as a dwelling.

Because the [MODEL HOMES] do qualify as manufactured homes, they are subject to state tax under the provisions of T.C.A. §67-6-216. Thus, state tax must be applied at the rate of three-percent (3%) to all of the items listed in T.C.A. §67-6-216, as quoted above. Contractor's use tax will not apply to the installation of these units. If the state tax rate is subsequently changed, the new rate applicable to manufactured homes will be one-half (1/2) of the new state tax rate.

Local tax must be applied to the sale of [MODEL HOMES] at the rate imposed by the county and/or municipality in which the taxpayer is located. T.C.A. §67-6-702. However, local tax should be applied only to the first \$1,600.00 of the sales price. T.C.A. §67-6-702(d). Also, parts and accessories and any other additional or incidental items or services that are a part of the sale of a manufactured home will be treated as part of the manufactured home unit for

purposes of applying the \$1,600.00 single article cap if such parts or accessories are:

. . . installed at the factory and delivered with the unit as original equipment and/or parts or accessories for [manufactured homes] that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the [home] shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a [manufactured home] dealer which are essential to the functioning of the [manufactured home] or are required to be installed on the [manufactured home] prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the [manufactured home] shall be treated as a part of the unit. . . .

T.C.A. § 67-6-702(d).

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APPROVED: \_\_\_\_\_  
Ruth E. Johnson  
Commissioner

DATE: 5-1-98